FEDERAL CONSISTENCY

Understanding Guam Coastal Zone Enforceable Policies

Tina Mafnas, Planner
Bureau of Statistics and Plans,
Guam Coastal Management Program

WHAT TO EXPECT

- The Basics
  - Legal authority
  - What is Federal Consistency
  - Does CZMA apply? (3 questions to ask)
    - ◊ is there a proposed federal actions
    - ◊ are there reasonably foreseeable effects
    - ◊ is the federal action consistent with the state's approved enforceable policies
- Case Study

The Basics: What is the CZMA?

- The Coastal Zone Management Act of 1972
  - Encouraged states to develop management programs and policies to meet a broad range of objectives
  - Requires federal agency actions to be consistent with state coastal management policies
    (known as the "**federal consistency**" requirement)
- Establishes legal requirements for federal agencies that are separate from and independent of other federal requirements

CZMA § 307 (16 U.S.C. § 1456) and 15 C.F.R. Part 930

The Basics: Enforceable Policies

- EO 78-37 - Established enforceable policies.
- GCMP – Established September 1979

The Basics:
What is Federal Consistency?

Federal actions, in or outside the coastal zone, that may have **reasonably foreseeable effects** on any land or water use or natural resource of a state's coastal zone must be consistent with the **enforceable policies** of the state Coastal Management programs.

See CZMA § 307 (16 U.S.C. § 1456)

The Basics:
Where to begin? Three Questions

1. Is there a proposed federal action?
2. Are there reasonably foreseeable coastal effects?
3. Is the federal action consistent with the state's approved Coastal Zone Management Act enforceable policies?

Ask first:
What is the proposed Federal Action?

Federal actions, in or outside the coastal zone, that affect any land or water use or natural resource of a state's coastal zone must be consistent with the enforceable policies of state coastal management programs

Federal Actions:
The Three Types of Federal Actions

Is there a "federal action?"

- Federal agency activities and development projects

  CZMA § 307(c)(1), (2), 15 C.F.R. 930, subpart C

- Federal licenses or permits (non-federal applicants)

  CZMA § 307(c)(3)(A), 15 C.F.R. 930, subpart D

- Federal financial assistance to state or local agencies

  CZMA § 307(d), 15 C.F.R. 930, subpart F

The Basics:
Know Which Subpart Applies

- Each type of federal agency action is governed by a specific rule subpart
- There are differences in responsibilities, terminology, timeframes, standards, and processes between the rule subparts
- Subpart C includes any federal action that is not covered under other subparts

Tanguisson Power Plant, Tamuning

Governor's Complex, Adelup

SUBPART C FEDERAL AGENCY ACTIVITY

Realistic Urban Training Exercise

GPA'S Shoreline Power Pole Restoration, Agat

GTA SEA-US Guam-CNMI Cable Landing, Piti Bay & Tepungan Channel

SUBPART D

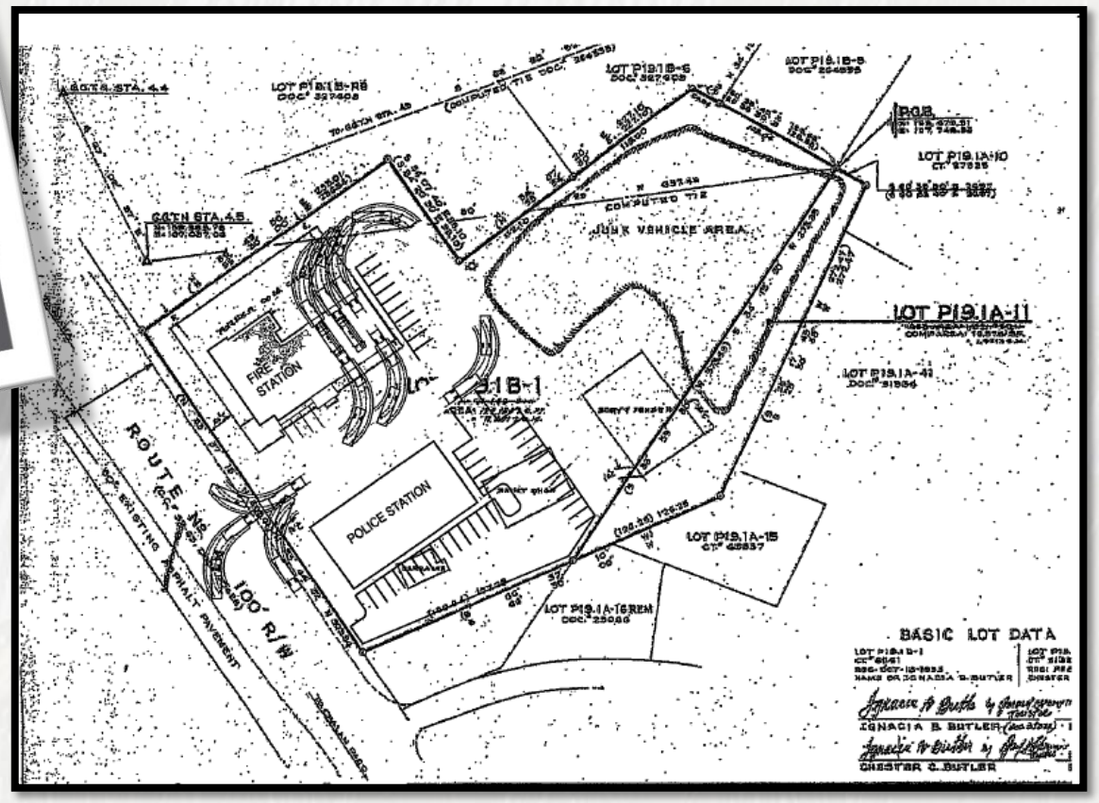
Federal License and Permit

Power Pole Restoration and Cable Landing

SUBPART F

Federal Assistance to State & Local Government

GHURA's land purchase and construction of the new Central Police Precinct and Fire Station



Development

Next Question:
Are there reasonably foreseeable effects?

Federal actions, in or outside the coastal zone, that affect any land or water use or natural resource of a state's coastal zone must be consistent with the enforceable policies of state coastal management programs

The Basics: The Definition of Effects

"Any reasonably foreseeable effect on any coastal use or resource of the state"

15 C.F.R. § 930.11(g)

The Basics: Determining Effects

- Reasonably foreseeable direct & indirect effects on any coastal use or resource of the coastal zone. § 930.33(a)(1)
- Effects test shall be broadly construed. § 930.33(d)
- All development projects within the coastal zone are presumed to have coastal effects. § 930.33(b)
- A NEPA FONSI ≠ a finding of no reasonably foreseeable effects

The Basics: Determining Effects

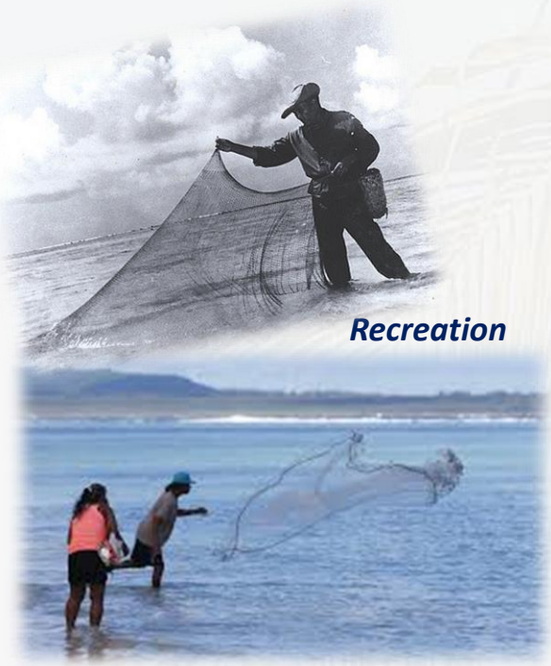
- Direct
- Indirect
  - Cumulative impacts (by repetition or multiplication)
  - Secondary impacts (associated impacts, e.g., economic damages)
- May be adverse or beneficial
- To uses or resources of the coastal zone of the state including those outside of the coastal zone

Who is responsible for determining effects?

- Subpart C – Activities undertaken by federal agencies:
  - –Solely determined by the federal agency
- Subpart D – Federal licenses and permits listed by states:
  - –State has the final word
- State requests to review unlisted activities:
  - –NOAA has the final word

Coastal Resources

PUBLIC ACCESS



Ritidian Latte Site (Litekyan)

CULTURAL/HISTORIC

Guam National Wildlife Refuge

Mariana Fruit Bat

WILDLIFE

WETLANDS

CULTURAL RESOURCES

Coastal Uses

Types of Effects of Concern

PUBLIC ACCESS

SOIL EROSION

CULTURAL/NATURAL RESOURCES

INVASIVE SPECIES

Then Ask:
Is the federal action consistent with the state's approved enforceable policies?

Federal actions, in or outside the coastal zone, that affect any land or water use or natural resource of a state's coastal zone must be Consistent with the enforceable policies of state coastal management programs

The Basics: Enforceable Policies

State reviews and objections must be based on approved enforceable policies

State CZMA enforceable policies are:

1. Based on a legally binding state authority (enforceable mechanism)

2. Contain a standard
   - but does not have to be specific

3. Have been approved by NOAA

DEVELOPMENT POLICIES

1. **Shore Area Development**

   environmental shore area land uses located within the Seashore Reserve.

2. **Urban Development**

   commercial, multi-family, industrial and resort-hotel zone uses and uses requiring high levels of support facilities as outlined on the Land Use Districting Map.

3. **Rural Development**

   development patterns compatible with environmental and infrastructure support suitability.

4. **Major Facility Siting**

   recognize national interest in analyzing the siting proposals for major utilities, petroleum refining and transmission, port and air transportation, solid waste, sewage treatment and major reservoir sites.

5. **Hazardous Areas**

   development governed by the degree of hazard and land use regulations.

6. **Housing**

   efficient design of residential areas taking into account natural and man-made hazards and limitations of the islands resources to support historical patterns of residential development.

7. **Transportation**

   efficient and safe transportation system limiting adverse environmental impacts to primary aquifers, beaches, estuaries and other coastal resources.

8. **Erosion and Siltation**

   control development where erosion and siltation damage is likely to occur.

RESOURCE POLICIES

1. **Air Quality**

   control activities to insure good air quality through local air pollution regulations and federal air quality standards.

2. **Water Quality**

   control activities that may degrade Guam's drinking, recreational and ecologically sensitive waters.

3. **Fragile Areas**

   protect significant cultural areas and natural marine and terrestrial wildlife and plant habitats.

4. **Living Marine Resources**

   to protect marine resources in Guam's waters

5. **Visual Quality**

   to protect the quality of Guam's natural scenic beauty.

6. **Recreation Areas**

   to encourage environmentally compatible recreational development.

7. **Public Access**

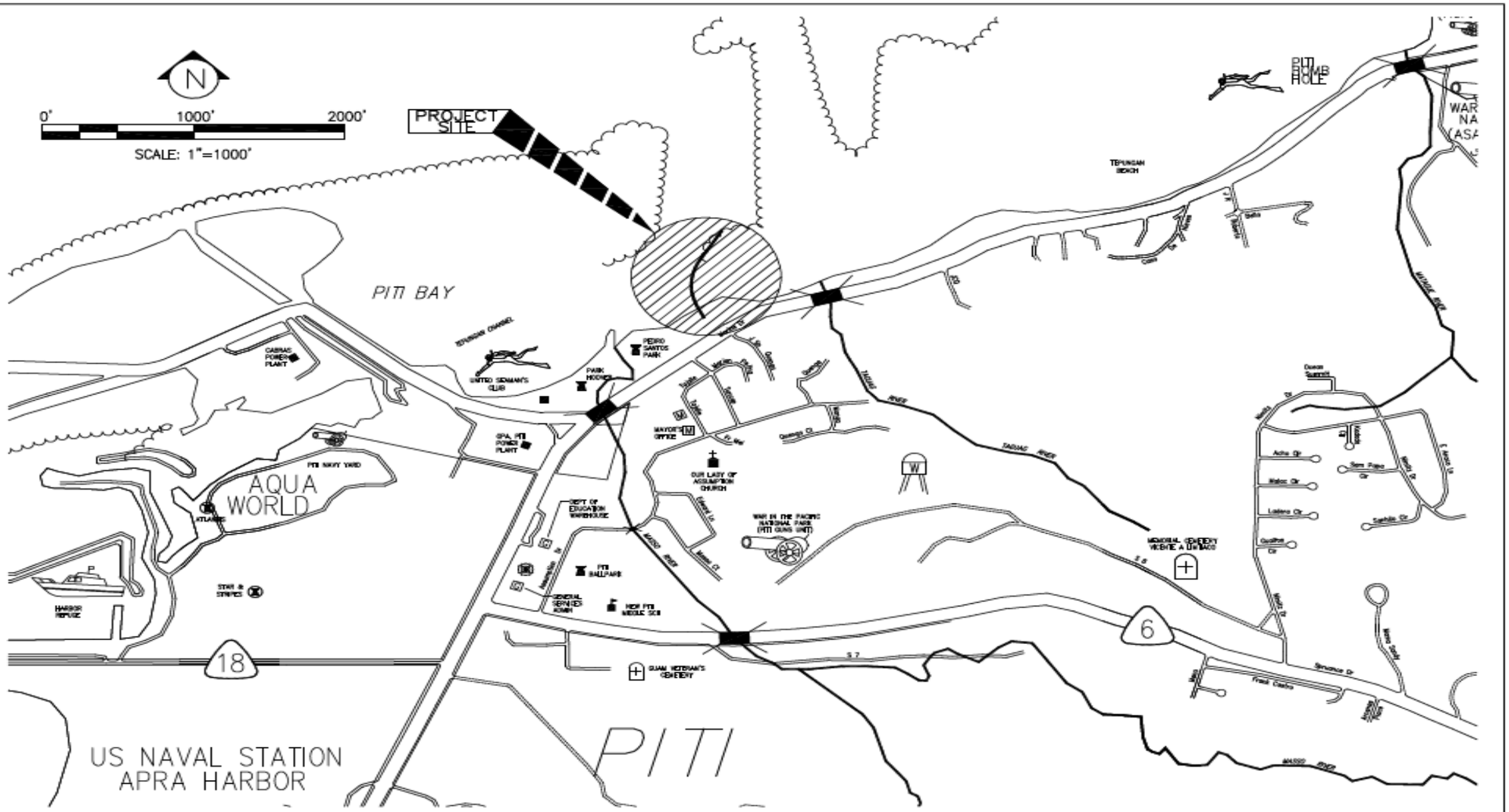
   ensure right of public access to territorial recreation areas, parks, scenic overlook, designated conservation areas and their public lands.

8. **Agricultural Lands**

   restrict urban types of development on agricultural land.

CASE STUDY

GTA Conduit Installation and Cable Landing for SEA-US Cable



Vicinity Map

Datum: Mean lower low water

POH–2016
GTA
624 North Marine Corps Drive
Tamuning, GU 96913

GTA Cable Raceway
Route 1, Piti, Guam
Sheet 1 of 6
June 2016

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Question 1: is there a proposed federal action? YES
  - Proposed action is to install six conduits to receive submarine fiber-optic cables and NEC proposes to land two new submarine cables in two of the conduits for the Southeast Asia-US (SEA-US) telecommunication system linking Asia with Guam, Hawaii and California at the Tepungan Channel, Piti. This action will take place in the waters of the U.S.
- What type of federal action?

  Federal licenses or permits (non-federal applicants) – Subpart D

  - GTA will be seeking a Department of Army permit through U.S. Army Corps of Engineers

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Question 2: Are there reasonably foreseeable effects?

GTA Conduit Installation and Cable Landing for SEA-US Cable

PROJECT DESCRIPTION

The purpose of the project is to install a six conduits to form a cable raceway in Pedro Santos Memorial Park and the adjacent Tepungan reef flat that would ultimately receive two cables from the Southeast Asia-U.S. (SEA-US) Cable System telecommunication system, linking with Guam, Hawaii, and California (Figures 1 and 2, Exhibit A). The cables would land to GTA's Cable Landing Station (CLS) on the south (opposite) side of M... four spare conduits are needed to accommodate future cable landings at...

The project will dredge 233 cu. yds. from a trench (3 ft deep by 6 ft wide b... flat (approximately 2,422 sq. ft. or 0.05 acre), from the mean high... d edge of the Tepungan Channel (Exhibit B). Six 4.8 inch (outer) dia... ill be installed in the trench. The trench will be backfilled and a conc... 0 ft long) will be installed to keep the conduits in place. Shortly a... two fiber-... cables will be la... through two of the conduits and pulled to shore where they ... to lan... beach manhole located above the high tide line. The work ...

... staged within the Santos Park grounds within the ... A Design Plans). Prior to construction, fixed silt ... shallow exposed reef flat to the north, south and western ... zone. A floating turbidity curtain will be deployed in the deeper ... as prior to the final excavation into the channel. Marine organisms (e.g., sea ...mbers, starfish and certain corals) within this zone will be manually relocated outside of the work zone. The silt curtains will be checked daily prior to commencing work.

2) Dredge material will be excavated and placed in a mobile container on the reef flat, then hauled onshore to in Santos Park at a location well above the mean high water mark and outside the Guam Seashore Reserve. The excavator will operate in the tidal zone and work ... conditions allow. No stockpiling would be performed in waters of the U.S.

... arse aggregate will be placed in the trench as bedding material. A single layer of ... iron conduits will be placed over the bedding material, covered by a layer of ... erial, and then backfilled with the same materials excavated from the trench to ... nch to the same grade as the surrounding area. Each length of conduit will ... -foot long sections connected to form a conduit approximately 404 feet long ... to the start of the channel.

... e connected to an additional 155 length of conduit (i.e., approximately 9 ...) from the MHW mark shoreward, where the conduits will terminate at ... an ground electrodes will be installed to ground the cables. The beach ... ound bed will be located inland and outside of the Guam Seashore ... 10 m (32.8 feet) inland of the MHW mark.

dredge 233 cy from a trench on the reef flat.

3ft deep by 6 ft wide by 403.61 ft long

Trench will be backfilled and a concrete bulkhead will be installed

Dredge material will be excavated and placed in a mobile container on the reef flat, than hauled onshore

Landing of SEA-US Cables

The landing of two SEA-US cables would commence shortly after the installation of the cable raceway, and would proceed as follows:

1) The stern of the cable ship would position itself at the mouth of the channel powered by its own thrusters to avoid anchoring on live corals. Two 1.6-inch (41 mm) diameter fiber-optic cables would be bundled on-board the cable ship prior to landing through the channel at Tepungan. The bundling will consolidate the cables into a smaller footprint on the seabed within the channel.

2) Floats will be attached to the bundled cable and it will be floated into the channel, where divers will position it over the seabed. Divers will cut the floats and gently lay the cable in place after confirming the placement avoids corals. If the cable needs to be repositioned, a stopper will be used to create slack on the cable and allow divers to manipulate the cable into place.

3) The cables will be unbundled as they approach the reef flat conduits, and pulled through two of the previously installed 4-inch diameter ductile iron conduits and into the beach manhole, where they will be spliced to the terrestrial cable raceway.

4) Articulated (split) pipe would be placed on the cable from the end of the ductil... distance of 200 m (656 ft). The cable will be selectively pinned with clamp... where no live corals are present at the channel mouth to prevent lateral move... cable.

The dredge site is a reef flat that receives heavy siltation deposited from two strean... nearest stream is an intermittent rock and rubble bottom stream that drains stormwate... upland areas via a culvert. The reef flat is a shallow low-relief pavement exposed at low tides with a high rate of sedimentation and very low coral cover. There are no seagrass or other vegetated shallows, riffle or pool complexes, mudflats or wetlands at the dredge site. Benthic habitat along the cable route comprises turf pavement, uncolonized sand, and aggregate reef dominated by corals, coralline algae, and macroalgae, and supports an array of fish and other pelagic organisms.

The cable alignment crosses into the Piti Bomb Holes Marine Preserve and Essential Fish Habitat designated around Guam, but does not cross any designated critical habitat under National Marine Fisheries Service jurisdiction. No federally-listed corals occur within the construction corridor for the conduit installation; however, non-listed corals are present and will be relocated prior to construction. The coral species are widely distributed within Tepungan Bay and will be transplanted to a site in the vicinity with similar characteristics. No work would occur during the coral spawning period in July and August. Upon completion of the conduit installation, there would be no further need for disturbance of the reef flat as future cables will be pulled through the conduits and spliced to a beach manhole above the mean high water line.

Non-listed corals are present and will be relocated

- Direct - YES
- Indirect - YES

-Cumulative impacts (by repetition or multiplication)

-Secondary impacts (associated impacts, e.g., economic damages)

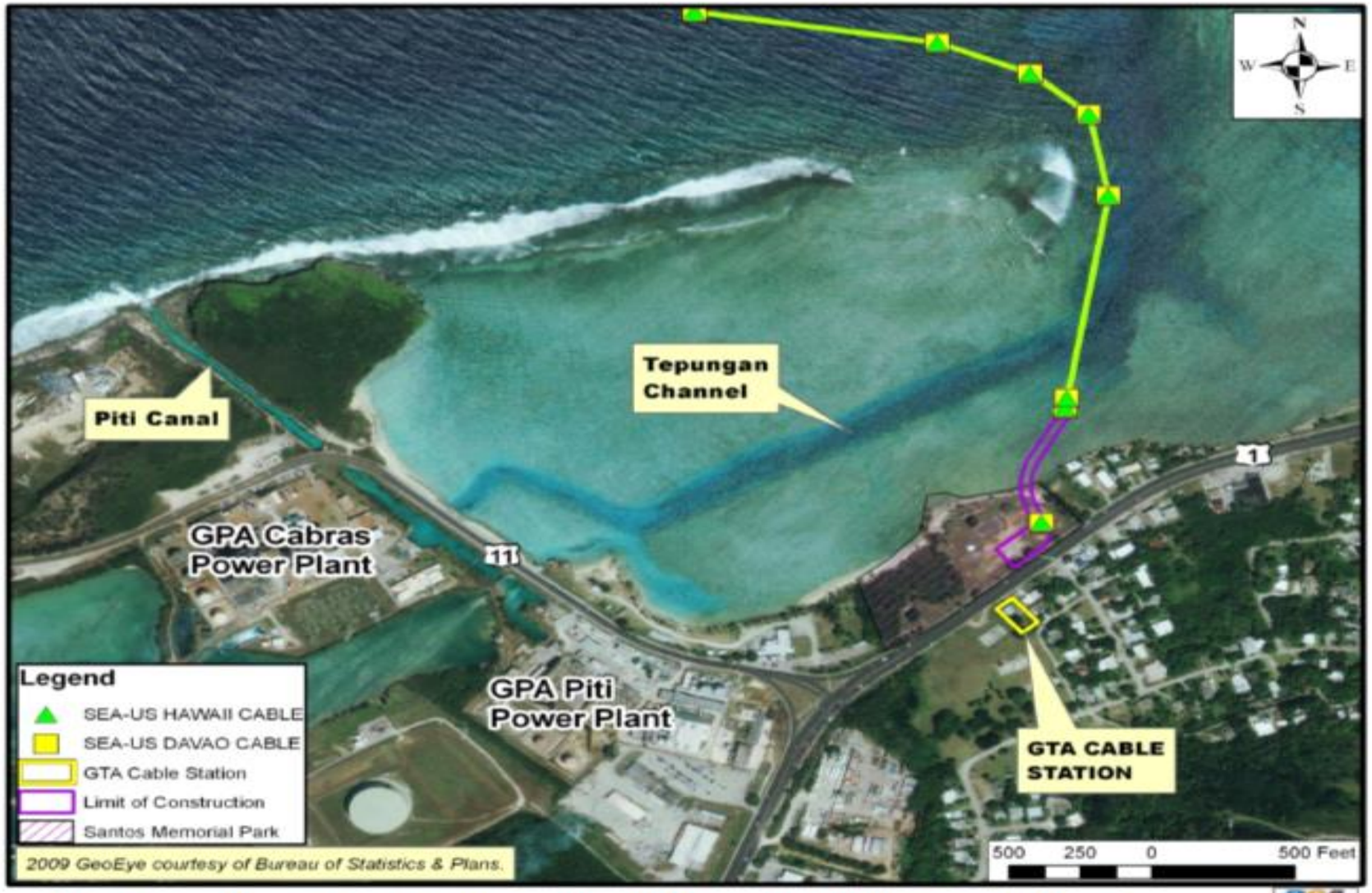


Figure 2. Aerial view of GTA cable raceway and SEA-US cable landing site, Piti, Guam.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Question 3: Is the federal action consistent with the State's approved CZMA enforceable policies?

DEVELOPMENT POLICIES

DP 1. Shore Area Development

environmental shore area land uses located within the Seashore Reserve.

DP 8. Erosion and Siltation

control development where erosion and siltation damage is likely to occur.

RESOURCE POLICIES

RP 1. Air Quality

control activities to insure good air quality through local air pollution regulations and federal air quality standards.

RP 2. Water Quality

control activities that may degrade Guam's drinking, recreational and ecologically sensitive waters.

RP 3. Fragile Areas

protect significant cultural areas and natural marine and terrestrial wildlife and plant habitats.

RP 4. Living Marine Resources

to protect marine resources in Guam's waters

RP 5. Visual Quality

to protect the quality of Guam's natural scenic beauty.

RP 6. Recreation Areas

to encourage environmentally compatible recreational development.

RP 7. Public Access

ensure right of public access to territorial recreation areas, parks, scenic overlook, designated conservation areas and their public lands.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- DP1 Shore Area Development

  Intent: To ensure environmental and aesthetic compatibility of shore area land uses

  Policy: Only those uses shall be located within the Seashore Reserve which:

  - enhance, are compatible with or do not generally detract from the surrounding coastal area's aesthetic and environmental quality and beach accessibility; or
  - **can demonstrate dependence on such a location and the lack of feasible alternative sites.**

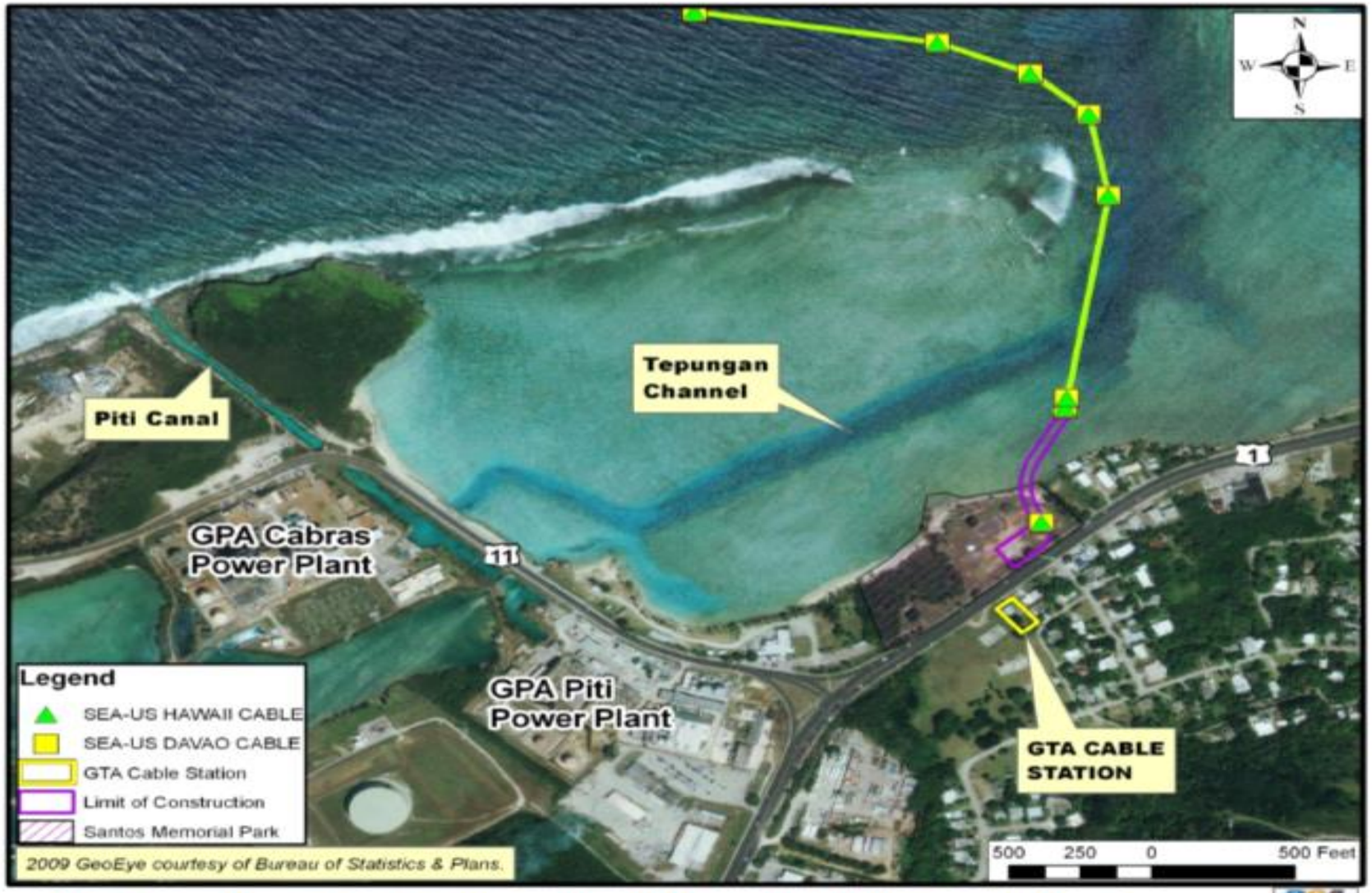


Figure 2. Aerial view of GTA cable raceway and SEA-US cable landing site, Piti, Guam.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - –Territorial Seashore Protection Act *(Interim permit control)*
  - - Territorial Beach Areas *(ownership of Guam Ocean Shore/acquisition)*
  - - Public Access to the Ocean Shore
  - - Water Pollution Control Act
  - - Soil Erosion and Sediment Control Regs

GTA Conduit Installation and Cable Landing for SEA-US Cable

- DP8 Erosion and Siltation

  Intent: To control development where erosion and siltation damage is likely to occur

  Policy: Development shall be limited in areas of 15% or greater slope by requiring strict compliance with erosion, sedimentation, and land use regulations, as well as other related land use guidelines for such areas.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - –Territorial Seashore Protection Act
  - - Soil Erosion and Sediment Control Regs


HYUNDAI

GTA Conduit Installation and Cable Landing for SEA-US Cable

- RP2 Water Quality

  Intent: To control activities that may degrade Guam's drinking, recreational, and ecologically sensitive waters

  Policy: Safe drinking water shall be assured and aquatic recreation sites shall be protected through the regulations of uses and discharges that pose a pollution threat to Guam's waters, particularly in estuarine, reef and aquifer areas.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - Territorial Seashore Protection Act
  - Water Pollution Control Act
    - Water Quality Standards
      - Includes 401 Certification
  - Soil Erosion and Sediment Control Regs

GTA Conduit Installation and Cable Landing for SEA-US Cable

- RP3 Fragile Areas

  Intent: To protect significant cultural areas, and natural marine and terrestrial wildlife and plant habitats

  Policy: Development in the following types of fragile areas including Guam's Marine Protected Areas (MPA) shall be regulated to protect their unique character

- Historical and archeological sites
- Pristine marine and terrestrial communities
- Mangrove stands and other wetlands
- Wildlife habitat
- Limestone forests
- Coral reefs

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - Territorial Seashore Protection Act
  - Territorial Beach Areas Act
  - Historic Preservation Laws
  - Species Protection

GTA Conduit Installation and Cable Landing for SEA-US Cable

- RP4 Living Marine Resources

  Intent: To protect marine resources in Guam's waters

  Policy: All living resources within the waters of Guam, particularly fish, shall be protected from over harvesting and, in the case of corals, sea turtles and marine mammals, from any taking whatsoever.

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - Territorial Seashore Protection Act
  - Land Conservation Act
  - Species Protection

GTA Conduit Installation and Cable Landing for SEA-US Cable

- RP6 Recreation Areas

  Intent: To encourage environmentally compatible recreational development

- RP7 Public Access

  Intent: To ensure the right of public access

GTA Conduit Installation and Cable Landing for SEA-US Cable

- Enforceable mechanisms include:
  - Territorial Seashore Protection Act
  - Territorial Park
  - Territorial Beach Areas Act
    - Ocean Shores: Territory Beach Areas
    - Public Access to the Ocean Shore

Listed Activities

How do you know if an activity is subject to state review?

- States list activities subject to review

  To see the state lists approved by NOAA, go to https://coast.noaa.gov/czm/consistency/states/

- Understanding Enforceable Policies: https://coast.noaa.gov/digitalcoast/training/enforceable-policies.html

- Procedures Guide for Achieving Federal Consistency with the Guam Coastal Management Program

QUESTIONS?

Si Yu'os Ma'åse

CONTACT INFORMATION

Tina Mafnas
Phone: (671)475-9668
Email: tina.mafnas@bsp.guam.gov